IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1052 OF 2007

PRADEEP B. MANDHYAN & ANR. ... PETITIONER.

VS.

JUNIOR MAGISTRATE FIRST CLASS,
ULHASNAGAR, DIST.THANE & ORS. ... RESPONDENTS.

MR. P.B.MANDHYAN- PETITIONER IN PERSON.

MS. G.P.MULEKAR APP FOR THE STATE.

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CORAM : J.N. Patel and A.A.Sayed,JJ.

DATE : September 5, 2007.

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P.C.

1. Heard the Petitioner in person. The Petitioner is a practicing advocate, who normally practices in the Court of Civil Judge, Junior Division and Judicial Magistrate, First Class at Ulhasnagar.

2. A contention of the Petitioner is that a complaint case came to be filed against the Petitioner for having committed offence under Section 465, 477 of the Indian Penal Code. We do not feel it necessary to mention details of the complaint as not relevant for the

issue raised by the Petitioner, which is required to be decided in this Petition.

3. The learned Magistrate took cognizance of the complaint and issued process against the Petitioner. On coming to know that summons are issued against him. the Petitioner voluntarily appeared before the Court and the Court directed him to file an application for bail so that he can be Ordered to be released on Bond.

4. It is the contention of the Petitioner that in a private complaint, if an accused surrenders before the Court or to the custody of the Court, whether it is required for him to file an application for bail and execute bond in order to answer the charge, by keeping himself present in the Court on all future dates of hearing. It is the case of the Petitioner that this procedure adopted by the Magistrate infringes the dignity and liberty of the accused, guaranteed to him under Articles 21 and 22 of the Constitution of India. The Petitioner has placed reliance on the decision of the Single Judge of Allahabad High Court, rendered in case of VISHWA NATH JILOKA AND ORS VS. 1ST MUNSIF LOWER CRIMINAL COURT, BAHRAIC AND ANR., REPORTED IN 1989 CRI.L.J. 2082, as also a decision rendered in case of K.PANDHARINATHAN VS. V. RAJU AND ANR., REPORTED IN 1998 CRI.L.J.1128.

5. The Petitioner wants this Court in larger interest of the public to explain the correct procedure for guidance of all the Magistrates, as spelt out in paragraph No. 7 to 11 of the Judgment in case of Vishwa Nath (Supra), with such modifications as may be deemed fit and proper, having regard to any special circumstances pertaining to the State of Maharashtra and direct the Respondent NO.2 to circulate the same to all the Magistrates in the State of Maharashtra. The Petitioner further challenges a circular issued by the then Registrar (Inspection) to the Chief Metropolitan Magistrate, Esplanade Court, Mumbai on 20th November, 2003, wherein on the directions of the then the Honourable the Chief Justice, all the Magistrates were directed to obtain personal Bonds or Bail Bonds from accused persons, after service of summons in complaint cases (Private Cases)

5. Article 21 of the Constitution of India clearly provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law and Article 22 provides for protection against arrest and detention in certain cases.

6. Chapter VI of the Code of Criminal Procedure provides for process to compel appearance of person before the Magistrate and, particularly, Sections

87,88,89 lay down procedure regarding execution of the summons, warrants, issue of warrant in lieu or in addition to, summons, power to take bond for appearance, arrest on breach of bond for appearance etc., and Sec. 90 lays down that the provisions of this Chapter are generally applicable to summons and warrants of arrest.

7. On plain reading of these provisions we find that the law vests sufficient powers in the Magistrates to insist upon the accused, who appear before the Magistrate on his own, pursuant to a summons/ warrant to execute bond for his release. There is no ambiguity in the procedure provided in the Code of Criminal Procedure in the matter and the Circular dated 20th November, 2003 issued by the then Registrar (Inspection) is in consonance with the procedure provided under the Code of Criminal Procedure.

8. The contention of the petition is that the Circular rather impinge upon the fundamental rights of the citizens guaranteed under Article 21 of the Constitution, cannot be accepted as it does not do away with due process of law and, therefore, we do not find any merit in the matter.

. Consequently, the petition stands dismissed.

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[J.N.Patel,J.]

[A.A.Sayed,J.]